

Bill no.:	H.L.C. Committee Print
Amendment no.:	63
Date offered:	4/13/05
Disposition:	Not Agreed to by 15 yeas and 29 nays

**AMENDMENT TO
OFFERED BY MR. MARKEY**

In subtitle G of title XII after section 1287, insert:

1 **SEC. 1288. AFFILIATE, ASSOCIATE COMPANY, AND SUB-**
2 **SIDIARY COMPANY TRANSACTIONS.**

3 Section 204 of the Federal Power Act (16 U.S.C.
4 824c) is amended by adding at the end the following:

5 “(i) TRANSACTIONS WITH AFFILIATES AND ASSOCI-
6 ATED COMPANIES.—

7 “(1) DEFINITIONS.—In this subsection, the
8 terms ‘affiliate’, ‘associate company’, ‘public utility’,
9 and ‘subsidiary company’ have the meanings given
10 the terms in section 1262 of the Energy Policy Act
11 of 2003.

12 “(2) REGULATIONS.—

13 “(A) IN GENERAL.—The Commission shall
14 promulgate regulations that shall apply in the
15 case of a transaction between a public utility
16 and an affiliate, associate company, or sub-
17 sidiary company of the public utility.

18 “(B) CONTENTS.—At a minimum, the reg-
19 ulations under subparagraph (A) shall require,
20 with respect to a transaction between a public



1 utility and an affiliate, associate company, or
2 subsidiary company of the public utility, that—

3 “(i) the affiliate, associate company,
4 or subsidiary company shall be an inde-
5 pendent, separate, and distinct entity from
6 the public utility;

7 “(ii) the affiliate, associate company,
8 or subsidiary company shall maintain sepa-
9 rate books, accounts, memoranda, and
10 other records and shall prepare separate fi-
11 nancial statements;

12 “(iii) the public utility—

13 “(I) shall conduct the transaction
14 in a manner that is consistent with
15 transactions among nonaffiliated and
16 nonassociated companies; and

17 “(II) shall not use its status as a
18 monopoly franchise to confer on the
19 affiliate, associate company, or sub-
20 sidiary company any unfair competi-
21 tive advantage;

22 “(iv) the public utility shall not de-
23 clare or pay any dividend on any security
24 of the public utility in contravention of
25 such rules as the Commission considers ap-



1 appropriate to protect the financial integrity
2 of the public utility;

3 “(v) the public utility shall have at
4 least 1 independent director on its board of
5 directors;

6 “(vi) the affiliate, associate company,
7 or subsidiary company shall not acquire
8 any loan, loan guarantee, or other indebt-
9 edness, and shall not structure its govern-
10 ance, in a manner that would permit credi-
11 tors to have recourse against the assets of
12 the public utility; and

13 “(vii) the public utility shall not—

14 “(I) commingle any assets or li-
15 abilities of the public utility with any
16 assets or liabilities of the affiliate, as-
17 sociate company, or subsidiary com-
18 pany; or

19 “(II) pledge or encumber any as-
20 sets of the public utility on behalf of
21 the affiliate, associate company, or
22 subsidiary company;

23 “(viii) the public utility—

24 “(I) shall not cross-subsidize or
25 shift costs from the affiliate, associate



1 company, or subsidiary company to
2 the public utility; and

3 “(II) shall disclose and fully
4 value, at the market value or other
5 value specified by the Commission,
6 any assets or services by the public
7 utility that, directly or indirectly, are
8 transferred to, or otherwise provided
9 for the benefit of, the affiliate, asso-
10 ciate company, or subsidiary company,
11 in a manner that is consistent with
12 transfers among nonaffiliated and
13 nonassociated companies; and

14 “(ix) electricity and natural gas con-
15 sumers and investors shall be protected
16 against the financial risks of public utility
17 diversification and transactions with and
18 among affiliates and associate companies.

19 “(3) NO PREEMPTION.—This subsection does
20 not preclude or deny the right of any State or polit-
21 ical subdivision of a State to adopt and enforce
22 standards for the corporate and financial separation
23 of public utilities that are more stringent than those
24 provided under the regulations under paragraph (2).



1 “(4) PROHIBITION.—It shall be unlawful for a
2 public utility to enter into or take any step in the
3 performance of any transaction with any affiliate,
4 associate company, or subsidiary company in viola-
5 tion of the regulations under paragraph (2).”.

